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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/529,862  
Filing Date: April 01, 2005  
Appellant(s): KRUSEMANN ET AL.

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Harris A. Pitlick  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 21, 2007, appealing from the Office action mailed March 22, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The amendment after final rejection filed on October 31, 2007, has been entered. Claims 1-6, 8, 9, 11, and 12 are under appeal.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

3,969,454	THORNBUR ET AL.	07-1976
6,503,317	ORTALANO ET AL.	01-2003

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

***Claims 1-6, 8, 9, 11, and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thornber et al. (U. S. Patent No. 3,939,454) in view of Ortalano et al. (U. S. Patent No. 6,503,317).***

Thornber et al. disclose a method of making a decorative particleboard incorporating wood particles (some or all of which are colored one or more different colors, see the Abstract), said method comprising essentially coloring at least a portion of selected wood particles, drying all the selected particles, forming a mattress therefrom, and hot-pressing said mattress. An alternative method envisages applying a layer of colored particles to a pre-manufactured particleboard. See col. 1, lines 19-40 of Thornber et al.

Coloring the particles involves using a water soluble substantive dyestuff (considered equivalent to the phrase "liquid colorant preparation"), and may be effected

in a number of ways. Preferably, the substantive dyestuff is absorbed onto the wood; other methods include vat dyeing and staining. See col. 1, line 64 to col. 2, line 8 of Thornber et al.; this disclosure is considered to read upon the claim limitation "applying a liquid colorant preparation", as recited in **claim 1**.

Thornber et al., in the Examples, depict embodiments in which dyes of various colors are employed to dye particles (e.g., poplar flakes, considered to read upon both "wood based material" and "derived timber product"), in endeavors to produce decorative colored particleboards. This disclosure is considered to read upon the limitations of **claims 8-10 and 12**.

Thornber et al. do not disclose the components of the water-soluble substantive dyestuff.

Ortalano et al. disclose aqueous dye-based pigment dispersions comprising dyes (such as either cationic or anionic dyes, see col. 4, line 17 to col. 5, line 12 of Ortalano et al., which also discloses that the dyes are present in amounts ranging from about 1 wt. % to about 50 wt. %, based on the total weight of the composition), pigments (see col. 5, lines 13-57 of Ortalano et al., which also discloses that the pigments are present in amounts ranging from about 1 wt. % to about 50 wt. %, based on the total weight of the composition), and water (making up the balance of the composition; see col. 5, lines 59-67).

This disclosure is considered to read upon Appellants' components (A), (B), and (D), as recited in **claims 2, 3, and 6**.

The pigment dispersions may also contain additives representing no more than 20 wt. % of the pigment dispersion. Exemplary additives include co-solvents and surface-active agents (used to modify surface tension; considered to read upon component (C) in **claims 4 and 5**, as well as component (E) in **claim 2**). See col. 6, lines 1-18 of Ortalano et al.

The pigment dispersions of Ortalano et al. "are used in a variety of industrial applications, such as the manufacture of...pulp and paper, coatings, and textiles to provide coloration." See col. 1, lines 13-16 of Ortalano et al.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the teachings of Thornber et al., by incorporating therein the pigment dispersions of Ortalano et al., and thereby obtain Appellants' claimed invention, motivated by the teachings of Ortalano et al. regarding the teaching of aqueous based pigment dispersions for the provision of coloration to pulp and paper, coatings and textiles.

#### **(10) Response to Argument**

In response to Appellants' argument that no relationship between the particleboard of Thornber et al. and the paper of Ortalano et al. has been established, the Examiner respectfully submits that the relationship is found in that they are both wood-based or wood-derived products. Further, Ortalano et al. disclose a pigment dispersion comprising components comparable to those respectively claimed.

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Appellants have not provided any convincing evidence that Patentees' dispersion would not suitably color MDF, HDF, or chipboard.

Further motivation to combine the cited references is found in Thorner et al.'s method for coloring particleboard (considered equivalent to "chipboard") with water-soluble dyestuffs, and in Ortalano et al.'s pigment dispersions, which comprise components corresponding to Appellants' claimed components, and the employment of these dispersions in, inter alia, pulp and paper, coatings, and textiles.

Secondly, one skilled in the art would derive from Ortalano et al. the use of coloring agents comprising pigment and from 0.5 to 10% by weight of dye, based on the amount of pigment. Appellants' citation of Example 22 of Ortalano et al. to refute this derivation is respectfully appreciated, but one of ordinary skill in the art would not look solely to the Examples of Ortalano et al. for an understanding of Patentees' invention, but to the reference as a whole. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. Denied, 493 U.S. 975 (1989).

For these reasons, Appellants' arguments are not persuasive.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

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